

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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PATRICIA A. STAYTON,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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CASE NO. 1:18-cv-1976

OPINION & ORDER  
[Resolving Doc. [15](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In this Social Security case, counsel for Plaintiff Patricia Stayton seeks approval for \$13,225.75 in attorney's fees.<sup>1</sup> Respondent Commissioner does not oppose.<sup>2</sup>

This Court concludes that awarding \$13,225.75, or \$618.02 per hour, would be a windfall for the Plaintiff's attorney.

This Court **ORDERS** payment of attorney's fees at \$400 per hour for 21.4 hours totaling \$8,560.

**I. Background**

In 2018, Plaintiff Stayton challenged the Commissioner of Social Security's decision to deny her disability benefits.<sup>3</sup> After Plaintiff filed her brief on the merits, the parties jointly stipulated that the case should be remanded to the Commissioner.<sup>4</sup>

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<sup>1</sup> Doc. [15](#).

<sup>2</sup> Doc. [16](#).

<sup>3</sup> Doc. [1](#).

<sup>4</sup> Doc. [11](#).

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This Court remanded the case to the Commissioner.<sup>5</sup> The Court also granted the parties' joint motion for Equal Access to Justice Act fees.<sup>6</sup> Through that order, Plaintiff's counsel received \$3,978.07 in fees under 28 U.S.C. § 2412.

On remand, the Commissioner awarded the Plaintiff \$137,303 in past-due benefits.<sup>7</sup>

Plaintiff now asks this Court to approve allotting 9% of the award, or \$13,225.75, to her attorney.<sup>8</sup>

The contingency fee arrangement states that Plaintiff's counsel may collect up to 25% of past-due benefits after a decision in Plaintiff's favor.<sup>9</sup> The fees award that Plaintiff's counsel now requests is the maximum amount that the contingency fee agreement authorizes. Plaintiff's counsel already received \$21,000 in fees for work before the Commissioner.<sup>10</sup>

Plaintiff's counsel says that counsel will reimburse the \$3,978.07 in already-received fees to Plaintiff if this Court approves a greater award.<sup>11</sup>

## **II. Legal Standard**

This Court must determine a reasonable attorney's fee in this case.

In a typical Social Security action, a plaintiff sues the Commissioner for denying a benefits claim. When a plaintiff wins, she receives a payment of "past-due benefits" totaling what she would have received were her claim not originally denied.<sup>12</sup>

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<sup>5</sup> Doc. [12](#).

<sup>6</sup> Doc. [14](#).

<sup>7</sup> Doc. [15](#) at 1.

<sup>8</sup> The contingency fee arrangement states that Plaintiff's counsel may collect up to 25% of past-due benefits after a decision in Plaintiff's favor. Doc. [15-4](#) at 1. Plaintiff's counsel already received \$21,100 in fees for work before the Commissioner. Doc. [15](#) at 1. Combined with the \$13,225.75, the requested total award would be \$34,325.75, or 25% of the award.

<sup>9</sup> Doc. [15-4](#) at 1.

<sup>10</sup> Doc. [15](#) at 1.

<sup>11</sup> Doc. [15](#) at 2.

<sup>12</sup> 42 U.S.C. § 404(a)(1)(B)(i).

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Under 42 U.S.C. § 406(b), an attorney may receive up to 25% of a past-due benefit award. However, courts must review the reasonableness of contingency fees, even if they fall within the statutorily allotted amount.<sup>13</sup>

In the Sixth Circuit, there is “a rebuttable presumption that an attorney would receive the full 25% contingency fee under contract unless . . . the attorney would enjoy an undeserved windfall due to the client’s large back pay award or the attorney’s relatively minimal effort.”<sup>14</sup>

Factors courts consider in determining whether a contingency fee payout constitutes a windfall include (1) “the standard rates applied to social security fee requests;”<sup>15</sup> (2) whether an award is more than twice the standard hourly rate;<sup>16</sup> and (3) the “the ‘brevity’ . . . of the representation.”<sup>17</sup> “If the benefits are large in comparison to the amount of time counsel spent on the case, a downward adjustment is . . . in order.”<sup>18</sup>

### III. Discussion

Here, the Plaintiff’s attorney would enjoy a windfall if this court approved a \$618.02 per hour rate.

Capping the fees at \$400 per hour is consistent with previous decisions in this Court and in this District.<sup>19</sup>

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<sup>13</sup> *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002).

<sup>14</sup> *Hayes v. Sec’y of HHS*, 923 F.2d 418, 419 (6th Cir. 1990).

<sup>15</sup> *Lasley v. Comm’r of Soc. Sec.*, 771 F.3d 308, 310 (6th Cir. 2014).

<sup>16</sup> *Hayes*, 923 F.2d at 422.

<sup>17</sup> *Lasley*, 771 F.3d at 310.

<sup>18</sup> *Gisbrecht*, 535 U.S. at 808.

<sup>19</sup> *Hyla v. Comm’r of Soc. Sec.*, 1:18-CV-1279, 2020 WL 3512843, at \*1 (N.D. Ohio June 29, 2020); *Daniels v. Colvin*, 1:11-CV-806, 2017 WL 35697, at \*1 (N.D. Ohio Jan. 4, 2017); *Hayhurst v. Berryhill*, 5:16-CV-576, 2018 WL 1122135, at \*2 (N.D. Ohio Mar. 1, 2018); *Hayes v. Colvin*, 1:13CV2812, 2015 WL 4275506, at \*3 (N.D. Ohio July 14, 2015) (collecting cases) (“Courts in this District have previously determined that an hourly rate of up to \$350 is an appropriate upper limit in awarding attorney fees pursuant to § 406(b).”).

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In addition, although this Court acknowledges that the Plaintiff's counsel succeeded, he only represented his client for 21.4 hours—a relatively brief amount of time.<sup>20</sup>

Therefore, the Court reduces the attorney's fees to \$400 per hour for 21.4 hours. The total fees award is \$8,560.

#### IV. Conclusion

Accordingly, this Court **ORDERS** payment of attorney's fees at a rate of \$400 per hour for 21.4 hours for a total award of \$8,560. The Plaintiff's attorney must also refund the Plaintiff the \$3,978.07 in attorney's fees this Court previously awarded under 28 U.S.C. § 2412.

IT IS SO ORDERED.

Dated: August 8, 2022

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>20</sup> Doc. 15 at 2.